Supreme Court, U.S.
FILED
APR 11 1996
CLERK

(2)

No. 95-1545

In The
SUPREME COURT OF THE UNITED STATES
October Term 1995

ROY F SUTTON

Petitioner,

v

HON. ANTHONY L GIBSON, HON. CHARLES R PREVITI, PERSKIE & NEHMAD A PC, PHILIP J PERSKIE, ESQ., FREDRIC L SHENKMAN, ESQ., CO-EXECUTOR RONALD W SUTTON, INDIVIDUALLY AND AS CAPTAIN, ACPD, CO-EXECUTOR LORETTA E SUTTON, INDIVIDUALLY and THE ESTATE OF ROY C SUTTON.

RESPONDENTS.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

SUPPLEMENTAL BRIEF

ROY F SUTTON
436 LAFAYETTE BLVD
BRIGANTINE, N.J.
08203
609 266 0444
PETITIONER

10 PP

STATEMENT OF FACTS

The Law Division matter, subject of cost and fees motion herein, was filed in early 1993 and was subsequently dismissed on March 15, 1994 and was upheld on appeal on March 13, 1995.

Parenthetically, upheld on appeal was that petitioner had no further standing in estate matters and that privilege could be invoked as a defense to judgment breaches in a collateral lawsuit.

On March 26 , 1996, petitioner was notified by the Clerk of this Court that petition was docketed on March 25, 1996 as No. 95-1545.

In retaliation for filing petition with this Court; Respondents , herein, filed notice of motion seeking attorney fees and costs as being filed with the Superior Court of New Jersey, Law Division, Atlantic County, on April 1, 1996 (APP at Psa1).

REASONS FOR GRANTING THE WRIT

Past and continuing colorable harassment against petitioner for exercising, seeking federal protection, remedy justify, warrant this Court's jurisdiction to safeguard, vindicate constitutional authority ,guarantees under the Supremacy Clause and the Fourteenth Amendment.

ARGUMENT

I. SEEKING RETALIATORY ATTORNEY FEES AND COSTS, WITHOUT JURISDICTION, IS A CONTINUING, COLORABLE PROPERTY DEPRIVATION ACTIONABLE IN A FEDERAL FORUM UNDER UNDER AEGIS OF TITLE 42 SECTION 1983

In New Jersey, courts do not retain jurisdiction over matters , unless so embodied within a related court order, which is not the case herein.

If warranted, Attorney Shenkman should have immediately applied for costs & fees after prevailing in the Law Division on March 15, 1994 as cited in EVANS V PRUDENTIAL PROPERTY INS CO. 233 N.J. Super 652 (LAW DIV 1989).

If again warranted, Attorney Shenkman should have filed for fees and cost within 10 days after affirmance on March 13, 1995 (APP Psa3).

Again under New Jersey Law, if fees and costs are sought in both the trial and appellate divisions, application must be made to each court separately: DOTSKO V DOTSKO 244 N.J. Super 668 (APP DIV 1990).

Under New Jersey Law again, which a federal court should regard respecting preclusion on collateral attacks under this Court's MARRESE V AM ACAD OF ORTH SURGEONS 470 U.S. 371, 1985; The motion Attorney Shenkman has filed is being done so without jurisdiction and would be VOID. At the end of a suit, jurisdiction is divested, lost under MORLEY V MCDONALD 98 N.J.L. 275, (N.J. Sup Ct, 1922). Void judgments are subject to collateral attacks.(see Cert. Pet. at p 5)

II. CONTINUING, COLORABLE ACTIONS AGAINST PETITIONER FOR SEEKING AND EXERCISING FEDERAL REMEDY, PROTECTION SHOULD GENERATE MARKED, ADDITIONAL IMPETUS TO GRANT PETITIONER RELIEF.

The issues of Constitutional dignity and authority; and of federal jurisdiction and protection are of paramount,manifest importance generating this Court's interest, authority and must never be overlooked, understated, nor disregarded.

While this Court may only be slightly abraded, offended at state retaliation towards petitioner for seeking lower federal remedy, protection against colorable property deprivations, right denials; it is pellucidly clear that Attorney Shenkman's motion is directed at petitioner for attempting to exercise protective jurisdiction of this Supreme Court. (Psa 2, paras 49 & 52) "However, taking this matter to the Supreme Court is,ultimately,the last straw." The judicial power of the United States is being openly, brazenly affronted: U.S. CONSTITUTION, ARTICLE III, SECTION 1.

While the Shenkman motion has not been acted upon by the Law Division, petitioner would maintain that this motion is harassment actionable under Section 1983 as is also being argued within Cert. Petition at page 8, Argument III respecting private parties.

CONCLUSION

Federal protection, remedy is clearly warranted , necessary under circumstances cited herein; and while this Court is not a lower working court, jurisdiction should be exercised to assert federal authority and also to act as a court of last resort as being consistent with the role of national policymaker and of national conscience.

Very respectfully yours

Roy F Sutton
436 Lafayette Blvd.
Brigantine, N.J. 08203
609 266 0444

Dated:

April 15, 1996

ROY F SUTTON	: SUPERIOR COURT OF NEW JERSEY
PLAINTIFF	: LAW DIVISION
V	: ATLANTIC COUNTY
PERSKIE & NEHMAD	: ATL-L-1228-93
ET AL,	: CIVIL ACTION
DEFENDANTS	: NOTICE OF MOTION

TO: ROY F SUTTON, PRO SE
436 LAFAYETTE BLVD.
BRIGANTINE, NEW JERSEY 08203

TAKE NOTICE that the undersigned will apply to the above named Court, at the Courthouse, 1201 Bacharach Blvd, Atlantic City, N.J., on Friday, april 26, 1996, at 9:00 am, or as soon as thereafter as counsel may be heard, for an order:

1. Awarding fees and costs pursuant to N.J.S.A. 2A:15-59.1 to certain of the defendants in the amount of $6,882.50 upon the following grounds:

SEE ATTACHED CERTIFICATION

Pursuant to R.1:6-2(d) the undersigned:

(x) waivers oral argument and consents to disposition on the papers

Dated: 4/1/96 /s/ FREDRIC L SHENKMAN,ESQ.

Pertinent Excerpts
Certification of Fredric L. Shenkman
supporting fees and costs motion

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47. During the pendency of the Law Division matter, I made certain motions to amend the pleadings so as to allow a counterclaim to be asserted to enjoin and restrain Roy from litigat ing matters that had already been litigated or that could have been litigated. Judge Previti denied these motions.

48. As such, a separate chancery matter was filed .....Chancery Division, Atlantic County..... In that case, ultimately, Judge Gibson entered an order enjoining and restraining Roy from filing suits that had been litigated or that could have been litigated previously. Judge Gibson also imposed fees and costs pursuant to N.J.S.A. 2A:15-59.1, et seq.

49.....Roy has now filed a Petition for Certiorari currently pending with the United States Supreme Court of the Third Federal Suit.

52.Specifically , I have withheld filing the within motion due to the hope that Roy would cease and desist.....However, taking this matter to the United States Supreme Court is, ultimately, the last straw.

53. Specifically, I have spent the time and effort outlined below, stricly as to the Law Division Matter, ...etc.....

New Jersey Appellate Rule 2:11-4
"Attorney Fees on Appeal"
-pertinent excerpts-

2:11-4. Attorney's Fees on Appeal.

An application for a fee for legal services rendered on appeal shall be made by motion supp orted by affidavits as prescribed by R.4:49-9(b) and (c),which shall be served and filed within 10 days after the determination of the appeal. The application shall state how much has been previously paid to or received by the attorney for legal services both in the trial and appeallate courts or otherwise, including any amount received by way of pendente lite allow ances, and what arrangements, if any, have been made for the payment of a fee in the future. Fees may be allowed by the appellate court in its discretion:.....